

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DERIOUS JOHNSON,	§	
	§	No. 56, 2009
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 9709002535
Appellee.	§	

Submitted: March 30, 2009

Decided: June 23, 2009

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

ORDER

This 23rd day of June 2009, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) In September 1997, the appellant, seventeen-year old Derious Johnson, was arrested on several drug charges. Following an amenability hearing in the Family Court, the case was transferred to the Superior Court where Johnson eventually pled guilty to one charge (“the 1998 case”). Johnson was initially sentenced to the boot camp diversion program, twice found in violation of probation, and discharged as unimproved in March 2001.

(2) In December 1999, Johnson, who by then was an adult, was arrested on robbery and weapons charges. In January 2001, Johnson pled guilty to first degree robbery and was sentenced.

(3) In October 2003, Johnson was convicted of first degree rape. Johnson was declared a habitual offender and was sentenced to life imprisonment.

(4) In December 2008, Johnson requested permission in the 1998 case to file an out-of-time motion for postconviction relief under Superior Court Criminal Rule 61 and/or motion for relief under Superior Court Criminal Rule 35. By order dated January 20, 2009, the Superior Court denied Johnson's request. This appeal followed.

(5) On appeal, Johnson challenges his conviction in the 1998 case on the basis that he was not given an amenability hearing. Johnson's claim is not supported by the record. The record reflects that Johnson was found non-amenable following a hearing in the Family Court on December 15, 1997.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice